Supreme Court, U.S.
FILED
MAY 11 1995
CLERK

No. 94-1340

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

CITIZENS BANK OF MARYLAND,

Petitioner,

v.

DAVID STRUMPF,

Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOINT APPENDIX

JAMES R. EYLER
(Counsel of Record)
JEFFERSON V. WRIGHT
IRVING E. WALKER
E. HUTCHINSON ROBBINS, JR.
MILES & STOCKBRIDGE, P.C.
10 Light Street
Baltimore, Maryland 21202
(410) 727-6464
Counsel for Petitioner.

Of Counsel:
DANIEL L. RHOADS
CITIZENS BANK OF MARYLAND
14401 Sweitzer Lane
Laurel, Maryland 20707
(301) 206-6023

JOHN R. OWEN, JR.
(Counsel of Record)
JOHN R. OWEN, JR. AND
ASSOCIATES
1835 University Boulevard
Hyattsville, Maryland 20783
(301) 445-2100
Counsel for Respondent.

Washington, D.C. • THIEL PRESS • (202) 328-3288

PETITION FOR CERTIORARI FILED FEBRUARY 6, 1995
CERTIORARI GRANTED MARCH 27, 1995

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

DATE	*DESCRIPTION*
January 25, 1991	Strumpf's Chapter 13 bankruptcy petition filed.
April 8, 1991	Bankruptcy court Order confirming Strumpf's Chapter 13 plan entered.
October 7, 1991	Citizens Bank of Maryland's motion for relief from automatic stay and for setoff filed.
October 9, 1991	Strumpf's motion to hold Citizens Bank of Maryland in contempt filed.
October 31, 1991	Strumpf's countermotion seeking release of administrative hold and turnover of funds filed.
November 21, 1991	Bankruptcy court Order finding Citizens Bank of Maryland in contempt and awarding sanctions entered.
November 21, 1991	Notice of appeal of bankruptcy court's Order finding bank in contempt and awarding sanctions filed by Citizens Bank of Maryland.
December 2, 1991	Bankruptcy court Order granting Citizens Bank of Maryland relief from the automatic stay and authorizing setoff entered.
December 23, 1991	Bankruptcy court Order for stay of enforcement of Order finding bank

	in contempt and awarding sanctions pending appeal entered.
March 30, 1992	Order from the U.S. District Court for the District of Maryland reversing the Order of the bankruptcy court finding Citizens Bank of Maryland in contempt and awarding sanctions entered.
April 29, 1992	Notice of appeal of district court's Order filed by Strumpf.
June 11, 1994	Bankruptcy court Order discharging Strumpf after completion of Chapter 13 plan entered.
October 13,1994	Order of the U.S. Court of Appeals for the Fourth Circuit reversing and remanding the Order of the district court entered.

APPENDIX A

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

CASE NO.

CHAPTER 13 PLAN

In re: DAVID STRUMPF

Debtor(s).

CHAPTER 13 PLAN

I. PROPERTY AND FUTURE EARNINGS.

The debtors submit the following property to the supervision and control of the Trustee: wages in the amount of $100.00 per month for 48 months.

II. CLASSIFICATION AND TREATMENT OF CLAIMS.

CLASS 1: Priority claim to pay attorneys fees in the amount of $500.00.

CLASS 2: Trustee's compensation as allowed.

CLASS 3: Allowed claims of unsecured creditors in the amount of $3,837.00 to be paid *pro-rata.*

III. OTHER PROVISIONS.

1. Payments by the Debtor will be made directly to the Trustee by the debtor beginning on or before February 28, 1991.

2. Regular monthly payments to Chrysler Corp. will be made outside the plan.

3. Debtor intends to surrender furniture to HRSI.

/s/ David Strumpf
Debtor

Dated: 1-24-91

/s/ John R. Owen, Jr.
John R. Owen, Jr.
Attorney for Debtors
1835 University Blvd., Ste. 232
Hyattsville, Maryland 20783
(301) 445-2100

APPENDIX B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MARYLAND

10226 336 9140389-COURT A

CASE NUMBER 91-4-0389PM

IN RE: DAVID STRUMPF
8150 LAKECREST DRIVE #516

GREENBELT, MD 20770
SSN 084-10-4119

9140389
U S BANKRUPTCY COURT
451 HUNGERFORD DRIVE
FIFTH FLOOR
ROCKVILLE, MD 20850

ORDER FOR MEETING OF CREDITORS,
COMBINED WITH NOTICE THEREOF
AND OF AUTOMATIC STAYS

To the debtor, his creditors and other parties in interest:

An order for relief under title 11 U.S.C. chapter 13 having been entered on a petition filed by the above debtor(s) on: JAN 25, 1991

IT IS ORDERED, AND NOTICE
IS HEREBY GIVEN THAT:

A meeting of creditors pursuant to title 11 U.S.C. §341(a) shall be held at:

OFFICE OF THE U.S. TRUSTEE
51 MONROE STREET ROOM B
PLAZA WEST 5
ROCKVILLE, MD.

DATE
MAR. 15, 1991
TIME
11.00 A.M.

ADDRESSEE

9140389 – COURT - A
BANKRUPTCY COURT
451 HUNGERFORD DRIVE
FIFTH FLOOR
ROCKVILLE, MD 20850

The debtor shall appear in person at that time and place for the purpose of being examined.

YOU ARE FURTHER NOTIFIED THAT:

The meeting may be continued or adjourned from time to time by notice at the meeting without further written notice to creditors.

At the meeting the creditors may file their claims, examine the debtor, and transact such other business as may properly come before the meeting.

As a result of the filing of the petition, certain acts and proceedings against the debtor and his property are stayed as provided in 11 U.S.C. §362(a) and against certain codebtors as provided in 11 U.S.C. §1301. Significant parts of these sections are reproduced on the reverse side of this notice.

In order to have his claim allowed so that he may share in any distribution from the estate, a creditor must file a claim, whether or not he is included in the list of creditors filed by the debtor. Claims which are not filed on or before JUNE 13, 1991 will not be allowed, except as otherwise provided by law. A hearing on confirmation of the plan will be held ON MARCH 20, 1991 AT 2.00 P.M.

IF WRITTEN OBJECTIONS TO CONFIRMATION ARE FILED, A HEARING ON SUCH OBJECTIONS WILL BE HELD AT THE TIME OF THE CONFIRMATION HEARING.

IF CHAPTER 13 PLAN IS AMENDED, A HEARING ON SUCH AMENDMENT WILL BE HELD AT THE TIME OF THE CONFIRMATION HEARING.

ANY QUESTIONS REGARDING THIS NOTICE MAY BE DIRECTED TO THE TRUSTEE, THOMAS LACKEY, 4325 NORTHVIEW DRIVE, BOWIE, MD. 20716. TELEPHONE NO. 301-390-6400.

ATTORNEY FOR DEBTOR – JOHN R. OWEN, JR.,
301-445-2100 1835 UNIVERSITY BLVD
SUITE 232, HYATTSVILLE, MD 20783

THE PLAN PROPOSES PAYMENTS TO THE TRUSTEE OF $100.00 MONTHLY

FILE CLAIM WITH ATTACHMENTS,
IF ANY, IN DUPLICATE WITH:

9140389 COURT – -A
U S BANKRUPTCY COURT
451 HUNGERFORD DRIVE
FIFTH FLOOR
ROCKVILLE, MD 20850

DATED FEBRUARY 26, 1991 BY THE COURT
AT ROCKVILLE, MD
PAUL MANNES
BANKRUPTCY JUDGE

CLAIMS LISTED BY THE DEBTOR

Secured	Priority	Unsecured	Total Debts
18,000.00		19,063.00	37,063.00

AUTOMATIC STAY

Section 362(a) (11 U.S.C. §362) provides that the petition:

". . . operates as a stay, applicable to all entities, of – –

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien

secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor."

STAY OF ACTION AGAINST CODEBTOR

Section 1301(a) (11 U.S.C. §1301) provides that:

"After the order for relief a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless – –

(1) such individual become liable on or secured such debt in the ordinary course of such individual's business; or

(2) the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title."

APPENDIX C

[Filed APR 08, 1991]

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

Case No. 91-4-0389

Chapter 13

IN RE: David Strumpf

Debtor

ORDER CONFIRMING PLAN

The Debtor's plan filed on January 25, 1991 having been transmitted to creditors; and

The deposit, if any, required by the plan in the sum of $100.00 having been made; and

It having been determined after hearing on notice;

1. That the plan complies with the provisions of Chapter 13 of Title 11, U.S.C., and with other applicable provisions of the Bankruptcy Code;

2. That the filing fee and any other amount required to be paid before confirmation has been paid;

3. That the plan has been proposed in good faith and not by any means forbidden by law;

4. That the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor was liquidated under Chapter 7 of Title 11, U.S.C., on such date;

5. That each holder of an allowed secured claim provided for by the plan has accepted the plan; or that plan provides that the holders of such claims retain the liens securing such claims and the value, as of the effective date of the plan, of property to be distributed under the plan on account of each such claim is not less than the allowed amount of each such claim; or the debtor has surrendered the property securing such claims to each such holder; and

6. The debtor will be able to make all payments under the plan and to comply with the plan; it is

ORDERED, That the debtor's plan is confirmed; and it is further

ORDERED, That on the 20th day of March 1991, and on the 20th day of each succeeding month thereafter until further Order of the Court, the debtor shall pay to the Trustee, Thomas L. Lackey, Esquire, 4325 Northview Drive, Bowie, Maryland, 20716, the sum of $100.00.

Date: APR 08 1991

/s/ Paul Mannes
U.S. BANKRUPTCY JUDGE
United States Bankruptcy Court
for the District of Maryland

cc: Thomas L. Lackey, Esq., 4325 Northview Dr., Bowie, MD 20716; John R. Owen, Jr., Esq., 1835 University Blvd., Ste. 232, Hyattsville, MD 20783; and to David Strumpf, debtor, 8150 Lakecrest Dr., #516, Greenbelt, MD 20770.

ENTERED: APR 08 1991

APPENDIX D

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MARYLAND

BKNO: 91-4-0389

To: DAVID STRUMPF
8150 LAKECREST DR
#516
GREENBELT, MD
20770

NOTICE OF CLAIMS

The trustee has examined the proofs of claim filed in this case and objected to the allowance of such claims as appeared to be improper except where no purpose would have been served by such objection. After such examination and objections, if any, the trustee states that claims should be deemed allowed, or "not filed" as indicated below.

CREDITOR NAME	*CLAIM AMT*	*STATUS*
CHRYSLER CREDIT CORP 7885 WALKER DRIVE SUITE 410 GREENBELT, MD 20770	PAY DIRECT ACCOUNT # – INTEREST RATE: 0%	SECURED
HRSI P O BOX 7671 NORTH SUBURBAN IL 60128	PAY DIRECT ACCOUNT # INTEREST RATE: 0%	SECURED

CREDITOR NAME	*CLAIM AMT*	*STATUS*
SEARS, ROEBUCK & CO. 7023 ALBERT PICK ROAD GREENSBORO, NC 27409	1,798.58 ACCOUNT #54 50971 47640 5 INTEREST RATE: 0%	UNSECURED
WOODWARD & LOTHROP P O BOX 740933 DALLAS TX 75374	919.34 ACCOUNT #864 535 64 INTEREST RATE: 0%	UNSECURED
CITIZEN BANK OF MARYLAND % LOAN DEPARTMENT P O BOX 117 LAUREL, MD 20707	NOT FILED ACCOUNT # INTEREST RATE: 0%	UNSECURED
BANK OF NEW YORK (DE) % BECKET ETAL P O BOX 512 MALVERN, PA 19355	2,439.08 ACCOUNT # 5432 3534 0129 4426 INTEREST RATE: 0%	UNSECURED
VISA CENTER 201 MAIN STREET LAFAYETTE, IN 47901	NOT FILED ACCOUNT # INTEREST RATE: 0%	UNSECURED
FCC NATIONAL BANK 60 CHARLES LINDBERGH BLVD UNIONDALE NY 11553	7,970.53 ACCOUNT # 4250 407 076 832 INTEREST RATE: 0%	UNSECURED
PERPETUAL SAVINGS BANK P O BOX 1494 ALEXANDRIA, VA 22314	NOT FILED ACCOUNT # INTEREST RATE: 0%	UNSECURED

CREDITOR NAME	*CLAIM AMT*	*STATUS*
HOUSEHOLD FINANCE CORP. P O BOX 2688 CHESAPEAKE, VA 23327	356.78 ACCOUNT # 519100 06 767840 INTEREST RATE: 0%	UNSECURED
TOTAL CLAIM AMOUNT:	13,484.31	

ATTORNEY FOR DEBTOR
JOHN R. OWEN, JR.
1835 UNIVERSITY BLVD
SUITE 232
HYATTSVILLE MD 20783

The trustee hereby notifies the debtor and counsel that the claims indicated as filed above are allowed under Section 502 of the U.S. Bankruptcy Code unless an objection to a claim is filed with this Court and sustained.

DATED: 09/17/91

THOMAS L. LACKEY,
CH. 13 TRUSTEE
4325 NORTHVIEW DRIVE
BOWIE, MD 20716

cc: Attorney for Debtor
Debtor

APPENDIX E

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

Case No. 91-4-0389PM
Chapter 13

Motion No. _____

IN RE:

DAVID STRUMPF

Debtor

* * * * * * * * *

CITIZENS BANK OF MARYLAND

Movant

v.

DAVID STRUMPF

Respondent

MOTION FOR RELIEF FROM AUTOMATIC STAY AND FOR SETOFF

Citizens Bank of Maryland (hereinafter "Bank") Movant, by Hartman and Crain, C. Edward Hartman III and Matthew A. Egeli, its attorneys, moves, pursuant to 11 U.S.C. §362(d) and Bankr. Rules R.4001(a) and 9014, for relief from the automatic stay and for setoff, and in support thereof states as follows:

1. The debtor is obligated to the Bank under an unsecured consumer loan note, which is in default.

2. By virtue of funds in the debtor's account with the Bank in an amount equal to the above-referenced debt,

there exist mutual and mature debts between the parties giving rise to the common law right of setoff.

WHEREFORE, the Bank request that the Court:

A. Issue an order granting the Bank relief from the automatic stay;

B. Issue an order authorizing the Bank to setoff the funds in checking account number 04261382 in the amount of Two Thousand Eight Hundred Seventy-Seven and 10/100 Dollars ($2,877.10) plus additional interest at the rate of $1.15 per diem from October 15, 1991 through the date of this Order, and attorney's fees of Three Hundred Eighty-Two and 58/100 Dollars ($382.58); and

C. Grant such other and further relief as the nature of this cause may require.

HARTMAN AND CRAIN

By: /s/ C. Edward Hartman III
C. Edward Hartman III

By: /s/ Matthew A. Egeli
Matthew A. Egeli
2660 Riva Road - Fourth Floor
Annapolis, Maryland 21401-7333
Telephones: 266-0505 (Annap.)
261-8513 (Wash.)
841-5204 (Balt.)

Attorneys for Citizens Bank of Maryland

Statement of Authorities

Memorandum in Support of Motion for Relief from Automatic Stay and for Setoff.

[Certificate of Service Omitted in Printing]

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

[Caption Omitted in Printing]

MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY AND FOR SETOFF

Citizens Bank of Maryland (hereinafter "Bank"), Movant, by Hartman and Crain, C. Edward Hartman III and Matthew A. Egeli, its attorneys, files this Memorandum in Support of its Motion for Relief From Automatic Stay and for Setoff.

FACTS

The facts relevant to the present Motion are as follows:

1. The debtor filed the petition which initiated this case on January 25, 1991.

2. The Debtor has checking account number 04261382 with the Bank. At that time, the account contained $11,279.86.

3. On November 28, 1989, the Bank loaned the Debtor the principal amount of Five Thousand Sixty-Eight and 75/100 Dollars ($5,068.75) pursuant to an unsecured consumer loan note ("Note") whereby the Debtor promised and agreed to pay to the order of the Bank the principal sum plus interest at the annual rate of sixteen and one-half percent (16.5%), pursuant to the terms and conditions of the Note, a true and accurate copy of which is attached hereto as Exhibit A and incorporated herein by reference.

4. The Debtor has not made a payment on the Note since January 4, 1991.

5. The Note further provides for immediate acceleration of the amount due upon default and for the payment of attorney's fees equal to fifteen percent (15%) of the amount due upon referral of the matter to an attorney for collection.

6. The Note has been declared in default. The amount presently due on the Note is as follows:

Principal	$2,500.50
Interest (from 1/4/91 through 10/15/90)	$326.00
Attorney's Fees	$382.58
TOTAL:	$3,259.68

7. Interest continues to accrue on the principal amount set forth in the above paragraph at the rate of $1.15 per diem.

DISCUSSION

It is a well established general proposition under Maryland common law that a bank has the right to setoff a depositor's account against a mature indebtedness. *Mercantile-Safe Deposit and Trust Co. v. Delp and Chapel Concrete and Const. Co.*, 44 Md. App. 34, 408 A.2d 1043 (1979). One prerequisite to setoff is that the Debtor and the bank have mutuality of debts. Mutuality of debts exists when the offsetting claims are due between the same parties acting in the same capacity. *In re Petros Energy & Land Corp.*, 54 B.R. 432 (N.D. Okla. 1985). A bankruptcy filing serves to accelerate the maturity of all debts so that a setoff right may be exercised post-petition. *In re Bass Mechanical Contractors, Inc.*, 84 B.R. 1009 (W.D. Ark. 1988).

The Bankruptcy Code ("Code") specifically preserves a creditor's right of setoff. *See* 11 U.S.C. §553 ("§553"). Subsection (a) of the §553 provides, with exceptions not relevant here, that the Code "does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case. . . ." Further, the legislative history to §553 states that it "preserves, with some changes, the right of setoff in bankruptcy cases now found in §68 of the Bankruptcy Act." *In re Zinke*, 97 B.R. 155 (E.D. N.Y. 1989) (*quoting* H.R. Rep. No. 595, 95th Cong., 1st Sess. 377 (1977), *reprinted in 1978 U.S. Code Cong. & Admin. News* 5963, 6333).[1]

Courts considering the question have consistently recognized a creditor's right to set-off in bankruptcy. *See e.g., In re Applied Logic Corp.*, 576 F.2d 952, 957 (2d. Cir. 1978); *In re Tileston Roberts Corp.*, 75 B.R. 76 (S.D.N.Y. 1987); *In re Petrose Energy and Land Corp., supra; In re Bass Mechanical Contractors, Inc., supra; Bridgeport Company, Inc. v. United States Postal Service*, 39 B.R. 118 (E.D. Ark. 1984). In *In re Applied Logic Corp., supra,* the Court, while acknowledging that one of the "dominant impulses in bankruptcy is equality among creditors" and that with setoff "the dominate

[1] It is also noteworthy that while it was generally held under the Act that Federal law governed issues arising under §68, when "the situation is one that §68 does not prescribe or regulate, . . . the courts apply the law of a state in connection with matters of substantive law relating to the asserted right of set-off—as for example, the imputation of payments on a plurality of obligations held by a creditor." *In re Zink, supra* (*quoting* 4 J. Moore, Collier on Bankruptcy ¶6806 at 886.1 (14th Ed. 1978) (footnotes omitted)).

impulse . . . its inequality among creditors," held that the right of setoff prevailed. As the Court stated, "[t]he rule allowing setoff, both before and after bankruptcy is not one that courts are free to ignore when they think application would be 'unjust'. It is a rule that has been embodied in every bankruptcy act the nation has ever had, and creditors, particularly banks, have long acted in reliance upon it." *Id.* at 957-58 (footnotes omitted). *See also In re Bohack Corp.*, 599 F.2d 1160, 1164-65 (2d. Cir. 1979) (the right of set-off "has the effect of paying one creditor more than another," but despite this inevitable effect, the doctrine of setoff "has long occupied a favored position in our history of jurisprudence.").

Applying the above law to the present case, it is apparent that the Bank should be permitted to apply the funds held by it in the Debtor's bank account against the mature obligation which the Debtor owes to the Bank under the Note.

CONCLUSION

For the foregoing reasons, the Bank's Motion for Relief From Automatic Stay and to Setoff should be granted.

HARTMAN AND CRAIN

By: /s/ C. Edward Hartman III
C. Edward Hartman III

By: /s/ Matthew A. Egeli
Matthew A. Egeli
2660 Riva Road - Fourth Floor
Annapolis, Maryland 21401-7333

Telephones: 266-0505 (Annap.)
261-8513 (Wash.)
841-5204 (Balt.)
Attorneys for Citizens Bank of Maryland

[Certificate of Service Omitted in Printing]

APPENDIX F

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

Case No. 914-0389-PM
Chapter 13

Motion No. _____

In re:

DAVID STUMPF

Debtor.

DAVID STRUMPF
8150 Lakecrest Drive, #516
Greenbelt, Maryland 20740

Movant,

v.

CITIZENS BANK OF MARYLAND
Serve: Dan Rhodes
14401 Sweitzer Lane
Laurel, Maryland 20707

Respondent.

MOTION TO HOLD CITIZENS BANK OF MARYLAND IN CONTEMPT AND EXPEDITED REQUEST FOR SHOW CAUSE HEARING

The motion of David Strumpf, debtor herein, will show the court the following:

1. Debtor filed a Chapter 13 Voluntary Petition on January 25, 1991.

2. Debtor's Chapter 13 Plan was confirmed on March 20, 1991.

3. On or about February 25, 1991, Respondent was served with an "Order for Meeting of Creditors, Combined With Notice Thereof and of Automatic Stays" (hereinafter "Order").

4. In violation of the "Order" and 11 U.S.C. §362, Respondent placed an administrative hold on Debtor's checking account on October 2, 1991, as evidenced by the attached letter. This action was taken more than seven (7) months after debtor's Chapter 13 Plan was confirmed.

5. This caused a hardship on Debtor and has made it impossible for him to meet his ongoing obligations and to pay his plan payment.

6. Respondent is attempting to collect an Unsecured Consumer Loan Note (copy attached) and, therefore, better its position in relation to other creditors.

7. Counsel for debtor has spoken by telephone to counsel for Respondent and advised him of the provisions of Section 362.

8. Respondent refuses to withdraw the administrative hold and continues to disregard Section 362 and the "Order" of this Court.

9. If Respondent does not release the administrative hold, Debtor will be unable to comply with the terms of his Chapter 13 Plan.

WHEREFORE, Debtor prays:

1. That the Court issue an Order requiring Respondent to file and serve its answer to these allegations, and show cause, if any there be, why it should not be adjudged in civil contempt for failing and refusing to comply with the "Order" and Section 362.

2. That after appropriate proceedings, Respondent be adjudged in contempt and required to purge itself of such contempt by:

(a) releasing the administrative hold on all accounts of debtor,

(b) paying all costs, expenses and attorney's fees incurred by debtor in connection with this motion, and

(c) paying damages to Movant in an amount set by the Court.

3. That this Court grant such other and further relief as it deems necessary.

/s/ John R. Owen, Jr.
John R. Owen, Jr.
1835 University Blvd., Ste. 232
Hyattsville, Maryland 20783
(301) 445-2100

DECLARATION

I. DAVID STRUMPF, declare and affirm under penalty of perjury that the contents of the foregoing motion are true and correct to the best of my knowledge, information and belief.

/s/ David Strumpf
DAVID STRUMPF

[Reporter's Certificate Omitted In Printing]

HARTMAN AND CRAIN

ATTORNEYS AT LAW
2660 RIVA ROAD - FOURTH FLOOR
ANNAPOLIS, MARYLAND
21401-7333

October 2, 1991

John R. Owen, Jr.
1835 University Boulevard
Suite 232
Hyattsville, Maryland 20783

David Strumpf
8150 Lake Crest Drive, #516
Greenbelt, Maryland 20770

RE: Citizens Bank of Maryland v. David Strumpf
Out File No.: 100.600.280

Dear Messrs. Owen and Strumpf:

This is to notify you that, with the filing of the enclosed Motion for Relief from Automatic Stay and for Setoff, the Bank has placed an administrative hold on your checking account up to $3,500.00 pending the outcome of the Motion.

Should you have any questions, please feel free to call.

Sincerely,

/s/ Matthew A. Egeli
Matthew A. Egeli

MAE/pa

APPENDIX G

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
AT ROCKVILLE

[Caption Omitted In Printing]

ORDER FINDING RESPONDENT IN CONTEMPT
AND AWARDING SANCTIONS

This matter is before the court upon the motion of the debtor to hold Citizens Bank of Maryland in contempt, the response of Citizens Bank, respondent, and after a hearing thereon and the count having considered the memoranda of the parties and the arguments in open court, and the court having stated its findings of fact and conclusions of law on the record at the conclusion of the hearing, and the court finding that the action of the said respondent in placing an administrative hold on the checking account of the debtor was a violation of the automatic stay of 11 U.S.C. §362(a), thereby entitling debtor to damages under 11 U.S.C. §362(h), it is, this 20th day of November, 1991, by the United States Bankruptcy Court for the District of Maryland,

ORDERED That the debtor is allowed counsel fees for the prosecution of the contempt action in the sum of $500.00; and it is further

ORDERED That the debtor is allowed punitive damages in the sum of $375.00 against the respondent; and it is further

ORDERED That debtor is allowed nominal damages in the sum of $25.00; and it is further

ORDERED That payment of all of the foregoing is to be made by respondent to the debtor, in care of his

counsel of record, on or before the 11th day of December, 1991.

/s/ Paul Mannes
PAUL MANNES, Chief Judge
United States Bankruptcy Court
for the District of Maryland

ENTERED: November 21, 1991

cc: John R. Owen, Jr.
C. Edward Hartman III
David Strumpf
Thomas Lackey

APPENDIX H

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

[Caption Omitted In Printing]

Motion No.: 91M-2236-PM

ORDER GRANTING RELIEF FROM AUTOMATIC STAY AND AUTHORIZING SETOFF

Having read and considered the Motion for Relief from Automatic Stay and to Setoff of Citizens Bank of Maryland, a Creditor, and all other matters in this case, it is this 25th day of November, 1991, by the United States Bankruptcy Court for the District of Maryland

ORDERED, that Citizens Bank of Maryland be and hereby is granted relief from the automatic stay; and it is further

ORDERED that Citizens Bank of Maryland be and hereby is authorized to setoff the funds in the checking account number 04261382 in the amount of Two Thousand Eight Hundred Seventy-Seven and 10/100 Dollars ($2,877.10) plus additional interest at the rate of $1.15 per diem from October 15, 1991 through the date of this Order, and attorney's fees of Three Hundred Eighty-Two and 58/100 Dollars ($382.58).

/s/ Paul Mannes
JUDGE

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Thomas Lackey, Trustee

Entered: December 2, 1991

APPENDIX I

CITIZENS BANK OF MARYLAND, Appellant

v.

DAVID STRUMPF, Appellee

Civil No. HAR-91-3692

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

138 B.R. 792

March 27, 1992, Decided
March 30, 1992, Filed

COUNSEL: Attorney for Appellant, C. Edward Hartman, III, Annapolis, MD 21401.

Attorney for Appellee, John R. Owen, Jr., Hyattsville, MD 20782.

JUDGES: Hargrove

MEMORANDUM OPINION

Currently before this Court is Citizens Bank of Maryalnd's ("Citizen's Bank") appeal from the United States Bankruptcy Court for the District of Maryland. The issues have been fully briefed, and no hearing is deemed necessary.

The first issue presented to this Court is whether the Bankruptcy Court erred as a matter of law in holding that the Appellant violated the automatic stay of 11 U.S.C. §362(a) when it placed an administrative hold on the Appellee's checking account pending the Bankruptcy Court's disposition of the Appellant's Motion for Relief from Automatic Stay and for Setoff. The second issue before this Court is whether the Bankruptcy Court erred

in finding the Appellant in contempt and assessing attorney's fees, punitive damages, and nominal damages under 11 U.S.C. §362(h).

FACTS

Citizens Bank loaned Strumpf $5,068.75 pursuant to an unsecured consumer loan note ("Note") on November 28, 1989. Strumpf agreed to pay off the loan (including interest) in twenty-four monthly installments. The Note provided for the immediate acceleration of the amount due upon default, and for the payment of attorney's fees upon referral of the matter to an attorney for collection. The note further provided for the right of setoff.

On January 25, 1991, Strumpf filed a Petition for Relief under Chapter 13 of Title 11, U.S.C., in the Bankruptcy Court. (Case No. 91-40389PM). At the time of the filing of the Petition, Strumpf had a checking account with Citizens Bank, containing $11,279.86. Because Strumpf had failed to make scheduled payments, Citizens Bank declared the Note in default.

On October 7, 1991, Citizens Bank filed a Motion for Relief from Automatic Stay and for Setoff against Strumpf. In the Motion, Citizens Bank sought permission to setoff the amounts owed on the Note against the amounts then in Strumpf's checking account. Simultaneous with filing the Motion for Relief from Automatic Stay and for Setoff, Citizens Bank placed an administrative hold on $3,500 in Strumpf's checking account,[1] pending a ruling by the Bankruptcy Court on the Motion. Citizens Bank took this action to prevent Strumpf from

[1]The amount due on the Note as of that date, including attorney's fees, was $3,250.48.

removing funds to which Citizens Bank claimed a setoff right.

On October 9, 1991, Strumpf filed a Motion to hold Citizens Bank in contempt for violation of the automatic stay of 11 U.S.C. §362(a), when it placed the administrative hold on the checking account. On November 4, 1991, the Bankruptcy Court, Judge Paul Mannes presiding, held a hearing on Citizens Bank's Motion for Relief from Automatic Stay and for Setoff, and reserved ruling on the Motion. On November 13, 1991, Judge Mannes held a hearing on Strumpf's Contempt Motion, granted the Motion, and ordered Citizens Bank to pay counsel fees of $500.00, punitive damages of $375.00, and nominal damages of $25.00. This ruling was set forth in a written Order on November 21, 1991.

Later, in a written Order entered December 2, 1991, Judge Mannes granted Citizens Bank's Motion for Relief from Automatic Stay and Setoff. Citizens Bank, in compliance with Judge Mannes contempt ruling, had lifted the administrative hold on the checking account. Before the granting of Citizens Bank's Motion for Relief from Automatic Stay and Setoff, Strumpf had removed all funds from the checking account.

I.

Citizens Bank cites a substantial body of persuasive caselaw for the proposition that a bank's placing of an administrative hold on a debtor's account pending the disposition of a motion asserting the bank's right of setoff is not a violation of the automatic stay. *See, e.g., Bank of America Nat'l Trust & Sav. Ass'n v. Edgins*, 36 B.R. 480 (9th Cir. Bankr. App. 1984); *Rio v. Army Aviation Center Fed. Credit Union*, 82 B.R. 138 (M.D.

Ala. 1986); *Stann v. Mid. Am. Credit Union*, 39 B.R. 246 (D. Kan. 1984); *In re Archer*, 34 B.R. 28 (B.C. N.D. Tex. 1983); *In re Bass Mechanical Contractors, Inc.*, 84 B.R. 1009 (Bankr. W.D. Ark. 1988); *Kenney's Franchise Corp. v. Cent. Fidelity Bank, NA*, 22 B.R. 747 (W.D. Va. 1982); *In re Williams*, 61 B.R. 567 (Bankr. N.D. Tex. 1986); *In re Hoffman*, 51 B.R. 42 (Bankr. W.D. Ark. 1985); *In re Gazelle, Inc.*, 17 B.R. 617 (Bankr. W.D. Wis. 1982); and *In re Carpenter*, 14 B.R. 405 (Bankr. M.D. Tenn. 1981).

The notion of the "banker's dilemma" supports the argument that banks have a right to place an administrative hold on a debtor's account pending further disposition of the funds:

> [W]hen a bankruptcy is filed, a bank claiming a right of set-off in a debtor's account may be faced with a dilemma–whether it should turn over proceeds of [the] debtor's account or whether it should exercise its set-off rights in violation of the automatic stay. To avoid this dilemma, many courts have allowed banks to place an "administrative freeze" on a debtor's account pending further disposition of the funds without violating the automatice stay. The placing of an administrative freeze on a debtor's account offers a way to preserve the debtor's account and is not a direct or indirect attempt to improve the bank's right to a distribution of assets.

Citizens Bank found itself in precisely this banker's dilemma until it placed an administrative hold on the debtor's account. Citizens Bank was not exercising its right of setoff without obtaining prior relief from the automatic stay–rather, it was acting to preserve the debtor's account until the Bankruptcy Court ruled on the Motion for Relief from Automatic Stay.

The Bankruptcy Court relief on the cases of *United States v. Reynolds*, 764 F.2d 1004 (4th Cir. 1985), and *United States v. Norton*, 717 F.2d 767 (3rd Cir. 1983), in holding that Citizens Bank's placing of an administrative hold on Strumpf's checking account was a violation of the automatic stay. Citizens Bank argues, however, that both *Reynolds* and *Norton*, are distinguishable from the case at bar. First, in those cases the Courts held that the United States, as a creditor, was not entitled to setoff income tax deficiencies which were scheduled to be paid in the debtors' confirmed Chapter 13 reorganization plans. In the case at bar, no provision was made in Strumpf's Chapter 13 plan to pay Citizens Bank's claim as a secured creditor. As such, the reorganization plan did not provide "adequate protection" for the Bank's security interest.

More importantly, in both *Reynolds* and *Norton*, the United States intended to hold the frozen funds until the Chapter 13 cases were closed. As such, the Courts viewed the retention of funds by the IRS as the equivalent of a setoff. In the case at bar, by contrast, the administrative hold was merely designed to hold the funds until the Bankruptcy Court ruled on the disposition of the funds. Had Citizens Bank sought to retain the funds without court approval until the entire Bankruptcy proceeding was closed, it would appear that the Bank was using the funds as a setoff, in violation of the automatic stay. However, Citizens Bank, upon finding itself in the banker's dilemma, acted reasonably by simply freezing the checking account funds only until the Bankruptcy Court ruled on its Motion for Relief from Automatic Stay and for Setoff.[2]

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[2]The Court in *Reynolds* addresses the concern that by unilaterally freezing funds, "the funds would become unavailable for

[footnote continued]

Further, it is noteworthy that in the case of *Craddock-Terry Shoe Corp. v. Crestar Bank*, 91 B.R. 392 (Bankr. W.D. Va. 1988), a case from the same district as *Reynolds*, the Court held, relying on *Kenney's Franchise Corp. v. Cent. Fidelity Bank*, 22 B.R. 747 (W.D. Va. 1982), that a bank's action in placing an administrative freeze on a debtor's account pending the resolution of its right of setoff was not a violation of the automatic stay.

Citizens Bank argues that it was relying on the substantial body of caselaw supporting its right to place an administrative hold on Strumpf's checking account pending the Bankruptcy Court's resolution of the Motion for Relief from Automatic Stay and for Setoff. In ruling that the administrative hold violated the automatic stay, the Bankruptcy Court effectively extinguished the Bank's right to setoff because, by the time the Motion for Relief from Automatic Stay and for Setoff was ruled upon, the Bank no longer possessed any of Strumpf's money. Citizens Bank asserts that the Bankruptcy Court's ruling effectively rendered the common law right of setoff unenforceable.

The Bankruptcy Court ruled on the Contempt Motion prior to ruling on the Motion for Relief from Automatic

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distribution to other creditors or for use by the debtor in a Chapter 13 plan, thus making it much less likely that the debtor could be rehabilitated." *Id.* at 1007. The Court notes that this problem would occur if the bank were using the money in the account for setoff without the authority of the Bankruptcy Court. In the case at bar, however, the Bank was merely awaiting instructions from the Bankruptcy Court, and obviously needed to freeze the funds such that the ultimate ruling of the Bankruptcy Court on the Bank's Motion could be carried out. As soon as the Bankruptcy Court ruled on the Bank's Motion, the Bank could have either lifted the freeze or exercised its setoff rights, as directed by the Bankruptcy Court.

Stay and for Setoff. The ironic result for Citizens Bank was that it was held in Contempt, was later granted its Motion for Relief from Automatic Stay and for Setoff, but could not exercise its right to setoff because (as predicted by Citizens Bank) Strumpf had removed the money from the checking account. This series of events rendered the Bankruptcy Court's ultimate granting of Citizens Bank's Motion meaningless.

The Court finds that the placing of an administrative hold on an account pending the Bankruptcy Court's ruling on the Bank's Motion for Relief from Automatic Stay and for Setoff does not equate to a setoff as a matter of law. In fact, permitting the Bank to freeze the funds until such time as the Court rules on the Bank's Motion for Relief from Automatic Stay and for Setoff is the only sensible procedural approach under these circumstances.

II.

Given the existing law supporting the Bank's right to freeze the account, and given the "catch-22" nature of the circumstances for the Bank in this case, it would be patently unfair to uphold the Bankruptcy Court's finding of contempt. Citizens Bank has noted that the issue of whether a bank may impose an administrative hold on a debtor's checking account has not been addressed by this Court in a published decision, and that any ambiguity in the law should be resolved in favor of the party charged with contempt. *Int'l Brotherhood of Teamsters, etc. v. W. Pa. Motor Carriers Ass'n*, 660 F.2d 76, 82 (3rd Cir. 1981). In any event, the Court agrees with Citizens Bank's interpretation of the applicable law, and as such, the Bankruptcy Court's finding of contempt cannot be upheld. Accordingly, the Bankruptcy

Court's finding of contempt and assessment of attorney's fees, punitive damages, and nominal damages against Citizens Bank under 11 U.S.C. §362(h) must be reversed. It will be so ordered.

3/27/92 Date

John R. Hargrove
United States District Judge

ORDER

In accordance with the foregoing Memorandum Opinion, IT IS, this 27th day of March, 1992, by the United States District Court for the District of Maryland, hereby ORDERED:

1. That the November 20, 1991 Order of the Bankruptcy Court for the District of Maryland, finding Appellant in Contempt for a violation of the automatic stay of 11 U.S.C. §362(a), and awarding sanctions under 11 U.S.C. §362(h), BE and the same hereby IS REVERSED.

2. That the Clerk of the Court CLOSE this case;

3. That the Clerk of the Court mail copies of this Order and the accompanying Memorandum Opinion to the Honorable Paul Mannes and all parties of record.

John R. Hargrove
United States District Judge

APPENDIX J

In re: DAVID STRUMPF, Debtor.

CITIZENS BANK OF MARYLAND,
Plaintiff-Appellee,

v.

DAVID STRUMPF, Defendant-Appellant.

No. 92-1519

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

37 F.2d 155

February 2, 1993, Argued
October 13, 1994, Decided

COUNSEL: Argued: John Randall Owen, Jr., JOHN R. OWEN, JR. & ASSOCIATES, P.C., Hyattsville, Maryland, for Appellant.

Argued: Matthew A. Egeli, HARTMAN & CRAIN, Annapolis, Maryland, for Appellee.

On Brief: C. Edward Hartman, III, HARTMAN & CRAIN, Annapolis, Maryland, for Appellee.

JUDGES: Before RUSSELL and WIDENER, Circuit Judges, and CHAPMAN, Senior Circuit Judge. Judge Widener wrote the opinion, in which Judge Russell and Senior Judge Chapman concur.

WIDENER, Circuit Judge:

This case presents an issue of first impression on the same facts in the courts of appeal, although the Third and Eighth Circuits have considered similar fact situations, as have we. It is whether a bank violates the automatic

stay of 11 U.S.C. §362(a) by placing an administrative hold on a debtor's account while seeking relief from the stay to exercise its right of setoff. The United States Bankruptcy Court for the District of Maryland held Citizens Bank of Maryland (Citizens) in contempt for violating the automatic stay and awarded damages to Strumpf under 11 U.S.C. §362(h). See *Citizens of Md. v. Strumpf*, 138 B.R. 792 (D. Md. 1992). On appeal, the United States District Court for the District of Maryland reversed. See 138 B.R. at 795. Strumpf now appeals and we reverse.

I.

On November 28, 1989, Citizens loaned Strumpf $5,068.75 on a note as an unsecured consumer loan to be repaid in 24 monthly installments. See 138 B.R. at 792. Upon default, the note provided Citizens with the right to immediately accelerate the amount due, the right to recover attorney's fees incurred in collection, and the right of setoff. See 138 B.R. at 792. On January 25, 1991, Strumpf filed a Chapter 13 bankruptcy petition. See 138 B.R. at 792. At the time of filing, Strumpf had $11,279.86 in a checking account with Citizens, and the note was in default because Strumpf had failed to make scheduled payments. See 138 B.R. at 792. On March 20, 1991, the bankruptcy court confirmed Strumpf's repayment plan.

On October 7, 1991, Citizens filed a motion for relief from the automatic stay and for setoff and placed an administrative hold on $3,500 in Strumpf's checking account, $3,250.48 being due on the note at the time. See 138 B.R. at 792-93. On October 9, 1991, Strumpf filed a motion to hold Citizens in contempt for violating the automatic stay of §362(a). See 138 B.R. at

793. The bankruptcy court reserved ruling on Citizens' motion on November 4, 1991, and then granted Strumpf's motion on November 13, awarding him attorney's fees of $500, punitive damages of $375, and nominal damages of $25. See 138 B.R. at 793. On December 2, the bankruptcy court granted Citizens' motion for relief from the stay and authorized it to exercise its right of setoff. See 138 B.R. at 793. Citizens, however, was unable to set off its loan because Strumpf had withdrawn all funds from his checking account after Citizens removed the administrative hold. See 138 B.R. at 793.

II.

The right of setoff may arise contractually or under state law, see 4 *Collier on Bankruptcy* ¶553.06 (15th ed. 1992), and it allows a creditor to apply one mutual debt against another to avoid "the absurdity of making A pay B when B owes A." *Studley v. Boylston Nat'l Bank*, 229 U.S. 523, 528, 33 S. Ct. 806, 808, 57 L.Ed. 1313 (1913). While the Bankruptcy Code preserves a creditor's right of setoff that arose before the filing of a petition in bankruptcy, see 11 U.S.C. §553(a), the Code stays the exercise of the right of setoff by making it subject to the automatic stay of §362(a).* See 11 U.S.C. §362(a)(7). To exercise its right of setoff, a creditor must obtain relief from the automatic stay by filing a motion with the bankruptcy court. See 11 U.S.C. §362

*The Code also grants creditors with a valid right of setoff two other rights. Section 506(a) gives a creditor a secured claim to the extent of the amount subject to setoff. See 11 U.S.C. §506(a). Section 542(b) excepts a creditor from turning over property to the debtor's estate to the extent of the setoff. See 11 U.S.C. §542(b).

(d). If the creditor fears that the property subject to the motion will suffer irreparable damage before notice and hearing may be had, the creditor may even file an ex parte motion under §362(f). See 11 U.S.C. §362(f). Any relief from the automatic stay rests within the sound discretion of the bankruptcy court. See *Small Business Admin. v. Rinehart*, 887 F.2d 165, 169 (8th Cir. 1989).

If the debtor learns of the motion for relief from the stay, however, the debtor may defeat the creditor's right of setoff by removing all funds in the creditor's possession before the creditor can obtain relief from the stay. Therefore, even if the creditor is granted relief from the automatic stay, the creditor will have nothing with which to set off the debt owing it. As the district court recognized, this scenario is known as the "banker's dilemma": "[W]hen a bankruptcy is filed, a bank claiming a right of set-off in a debtor's account may be faced with a dilemma—whether it should turn over proceeds of [the] debtor's account or whether it should exercise its set-off rights in violation of the automatic stay." *Citizens Bank*, 138 B.R. at 702, quoting from *In re Bass Mechanical Contractors, Inc.*, 84 B.R. 1009, 1022 (Bankr. W.D. Ark. 1988). Recognizing this dilemma, some bankruptcy and district courts have held that pending a motion for relief from the stay, a creditor asserting a right of setoff may place an administrative hold on a debtor's account without violating the automatic stay of §362(a). See *Citizens Bank*, 138 B.R. at 793 (holding same and collecting cases). Relying on this body of case law, Citizens placed an administrative hold on Strumpf's account and filed a motion for relief from the stay. See 138 B.R. at 794.

While we understand the dilemma that Citizens and other similarly situated creditors face, we cannot overlook the fact that the Code does not authorize such action, and is quite to the contrary. Setoff is explicitly within the terms of section 362(a)(7) which stays a creditor from exercising its right of setoff unless and until the creditor obtains relief from the stay. In *United States v. Reynolds*, 764 F.2d 1004 (4th Cir. 1985), we held that a freeze by the Internal Revenue Service (IRS) on a debtor's tax refund "was a setoff subject to the automatic stay and that the IRS violated the stay in retaining the funds." 764 F.2d at 1006-07. Based on this holding, we are of opinion that an administrative hold is tantamount to the exercise of a right of setoff and thus violates the automatic stay of §362(a)(7). See 764 F.2d at 1006-07. As well as *Rinehart, supra, United States v. Norton*, 717 F.2d 767, 773 (3d. Cir. 1983) and *In Re Penn Central Transportation Company*, 453 F.2d 520 (3d. Cir. 1972) (a railway reorganization under the Bankruptcy Act) are on slightly different facts but are fully in accord with our decision. Whether the creditor actually offsets the debtor's account or places a hold on the debtor's account, both effectively deprive the debtor of the use of the funds pending the outcome of the motion for relief from the stay. See *Rinehart*, 887 F.2d at 168.

Citizens attacks this holding, the same one reached by the bankruptcy court, claiming that *Reynolds* is distinguishable and that equating an administrative hold with the exercise of the right of setoff renders the right of setoff unenforceable and effectively repeals §553(a). Citizens states that unlike the IRS in *Reynolds*, Strumpf's plan made no provision to pay Citizens as a secured creditor despite its status as a secured creditor under §506(a). Furthermore, Citizens claims that, unlike the IRS, it did not intend to keep the hold on Strumpf's account until the end of his Chapter 13 plan.

We are not persuaded by Citizens' efforts to distinguish *Reynolds*. While the fact that Citizens was not provided for as a secured creditor in Strumpf's plan might be taken into account in deciding whether the bankruptcy court should grant Citizens relief from the automatic stay under §362(d)(1), it has no bearing on whether Citizens acted properly in placing an administrative hold on Strumpf's account. We are further of opinion that the length of time a creditor intends to maintain a hold is not relevant to whether a hold is tantamount to a setoff. In *Reynolds* the IRS intended to hold the funds until the Chapter 13 plan was closed because the bankruptcy court had denied it relief from stay due to its status as a secured creditor with adequate protection. See 764 F.2d at 1007. In this case, Citizens intended to hold Strumpf's account only until it could get relief from stay. These cases indicate to us that the length of time a creditor intends to maintain the hold is determined by that same creditor's ability to get relief from the automatic stay and exercise its right of setoff, so the length of time is not relevant to whether a hold is tantamount to a setoff.

We likewise are not persuaded by Citizens' claims that our holding renders the right of setoff unenforceable and effectively repeals §553(a). Statutory construction begins with the literal language of a statute, see *United States v. Turkette*, 452 U.S. 576, 580, 101 S. Ct. 2524, 2527, 69 L.Ed.2d 246 (1981), and if the language is clear and unambiguous our task is at an end unless a literal reading of the statute contravenes the clearly expressed legislative intent of Congress. See *Russello v. United States*, 464 U.S. 16, 20, 104 S. Ct. 296, 299, 78 L.Ed. 2d 17 (1983). While the banker's dilemma may allow a debtor to defeat a creditor's right of setoff, the clear and

unambiguous language of §362(a) produces this result. Furthermore, our holding does not contravene any clearly expressed legislative intent of Congress:

> The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

House Report No. 95-585, 95th Cong., 1st Sess. 340-2 (1977); Senate Report No. 95-989, 95th Cong., 2d Sess. 54-55 (1978); *reprinted in* 1978 U.S.C.C.A.N. 5787 at 5840 and 6296-7. "If a bank could freeze the debtor's accounts upon the filing of a petition in bankruptcy, the debtor's chances for successful rehabilitation would be substantially diminished." See *Reynolds*, 764 F.2d at 1007 (quoting *Norton*, 717 F.2d at 773).

III.

As for the bankruptcy court's award of attorney's fees, punitive damages and nominal damages, we are of opinion that such an award was appropriate and not an abuse of discretion. See *Budget Service Co. v. Better Homes of Va.*, 804 F.2d 289, 292-93 (4th Cir. 1986). To award damages under §362(h) the bankruptcy court need only find a willful violation of the automatic stay of §362(a). To constitute a willful act, the creditor need not act with specific intent but must only commit an intentional act with knowledge of the automatic stay. See *Budget Service*, 804 F.2d at 292-293; *In Re Atl. Business & Community Corp.*, 901 F.2d 325, 329 (3d Cir. 1990). In this case there is no doubt that Citizens

had knowledge of the stay when it placed the hold on Strumpf's account because the placing of the hold was an attempt to buy time while seeking relief from the automatic stay.

IV.

We are thus of opinion that Citizens' administrative hold on Strumpf's account violated the automatic stay provisions of §362(a)(7) and that the bankruptcy court did not abuse its discretion by finding Citizens had violated the automatic stay and awarding damages.

Accordingly, we reverse the decision of the district court and remand with instructions to reinstate all of the decision of the bankruptcy court except that part which may have held Citizens in contempt of court. That part of the decision of the district court with reference to holding Citizens in contempt of court is not appealed by Strumpf (Brief, p. 7-8), although that part finding Citizens had not violated §362(a)(7) and not awarding damages under §362(h) was appealed. In all events, the finding of contempt was surplusage. See *Budget Service Company*, 804 F.2d 289, 293, and no.4.

REVERSED AND REMANDED WITH INSTRUCTIONS.